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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
LAW CLERK'S

JOHN RICHARD JONES
Plaintiff,

vs.

FILED
HARRISBURG

U.S. District Judge R.
Magistrate Judge Smy

KENNETH D. HYLER et al.,

JUN 27 2001

Defendants.

MARY E. D'ANDREA, CLERK
DEPUTY CLERK

PLAINTIFF'S BRIEF IN REPLY TO DEFENDANT'S
MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO
CORRESPOND WITH ANOTHER INMATE

COMES now, the Plaintiff & his Counsel in the above entitled
John Rich and Jae, as a layman unlettered in the Arts & Sciences of
Legal Procedures within the United States, & who, now pursues
MD. LR 7.7, of this Court, files his Plaintiff's Brief in Reply to
Defendants' memorandum in opposition to Plaintiff's Motion to
with Another Inmate herein, & who, avers, deposes & states:

On or About June 1, 2001, Plaintiff filed his Motion
requiring Defendant Degatch and SCI-Greene Superior
Canner Blame to permit this Plaintiff to communicate
and write to Inmate Norman Johnston at SCI-Camp Hill
Brief in support, herein this above entitled Civil Rights Act.

On or About June 18, 2001, Defendants, by Counsel filed
Memorandum in opposition to Plaintiff's Motion to Correspond
Another Inmate, herein this case.

This here is the Plaintiff's Brief in Reply to Defendant's
Memorandum in opposition to Plaintiff's Motion to Correspond
Another Inmate.

I. THE PA. D.C. POLICY PROHIBITING INMATES FROM
CORRESPONDING WITH EACH OTHER WHILE
REPARABLE AND WHILE FURTHER INMATE
GENERAL PURPOSES IN GENERAL IS NOT
APPLICABLE HERE IN THIS CASE.

Inmates incarcerated at different institutions except where the Superintendent of the institution has specifically approved the communication. DC-ADM. 803. This regulation is a reasonable means of preventing inmates from different institutions from carrying out concerted action to disrupt the institutions or to facilitate escapes.

However, by way of reply to such, the Plaintiff avers & submits that while true in general, it is not true herein that this regulation is "not" even applicable herein, as the Plaintiff does "not" herein to communicate with Inmate Norman Johnston for purpose of carrying out any concerted action to disrupt the institution or to facilitate any escapes at all, but rather this Plaintiff is to correspond with Inmate Norman Johnston only for the purpose of obtaining the Affidavit from for use in enabling him to can oppose Defendants' Motion for Summary Judgment for use in Civil Rights Action, as is this Plaintiff's rights to do under § 14th Amendments of the U.S. Constitution and under Fed. R. Cr. P. which is thus protected activity, rendering the DOC Rule 7(c) #803.VI.A.3-a) prohibiting inmates from corresponding with one another unreasonable & unconstitutional in as far as such can be to prohibit this Plaintiff from obtaining legal information - the Affidavit from Inmate Norman Johnston in this case.

In n. 2, of the Plaintiff's Memorandum In Opposition to Plaintiff's Motion to Correspond with Another Inmate, Defendants State:

A true and correct copy of the relevant provisions of DC-ADM 803 are appended to this memorandum.

However, in reply to such, the Plaintiff avers & submits that DC-ADM. 803, which the Defendants have attached, is a memorandum is "not" a true & correct copy of the present DC-ADM 803 in effect now & such has been repealed & superseded by DC-ADM. #803. effective on February 19, 2001, & such is

Defendants next claim & argue, that:

In this case, the Department of Corrections has a legitimate penological interest in preventing communication between inmates. The Department has an interest in preventing inmates from carrying out concerted activity to disrupt the institution or to facilitate escapes.

In reply to such, the Plaintiff avers & submits that this court has held that the

While what the Defendants claim & argue here, may be true in general sense, such is "not" true here in this instant case, the Defendants do "not" have any penological nor legitimate interest nor reason in preventing this Plaintiff from communicating with Inmate Norman Johnston for the purpose of obtaining an Affidavit from to use to oppose Defendants' Motion for Summary Judgment in this case.

Defendants' next claim & argue that =

In this case, plaintiff alleges he sought permission to communicate with inmate Johnston for the purpose of having him sign an affidavit. He does not allege that he explained what facts he hoped to establish through the affidavit or how those facts were necessary to oppose summary judgment. In short, plaintiff did not demonstrate that his need to communicate with inmate Johnston overcame the Department's general policy prohibiting communications between inmates.

Thus the policy restricting intimate communications is reasonable both on its face and as applied in this case. 3/

However, in reply to such, the Plaintiff ~~has~~ ^{has} submitted that, in argument hereabove, "1" is factually frivolous & specious, as ~~in~~ ⁱⁿ place, the ~~1st~~ ^{1st} proceeding ~~is~~ ^{is} without the benefit of a lawyer in this case sub. judge and he did not know that he was to allege such, in the second place DC-ADM. # 103-12-123-9-99 written DOC filed with the Plaintiff has any copy of states and re that plaintiff must allege such in order for the Superintendent to consider & decide the request to communicate with another inmate, in the third place, in making this request of his counsel to the Superintendent for the permission to communicate with the Plaintiff ~~and~~ ^{and} explain to his counsel what facts he hoped to through the Affidavit, how these facts were necessary to ~~summarize~~ ^{summarize} judgment in this case.

~~Summary~~ Judgment in this case.

Furthermore, Defendant have failed to show that it was necessary for the plaintiff to allege what facts, though the affidavit in order for his request to be granted by the Superintendent and they have furthermore failed to show in this instant case, where this plaintiff seeks only

to communicate with Inmate Johnston solely to obtain the [redacted] from him, their policy prohibiting inmates at different institutions communicating, in order to prevent the inmates from engaging in coordinated activity to disrupt the prisons or to harm anyone can or would be reasonable on its face and as applied in this case.

In short, Defendants have clearly failed to demonstrate they have a legitimate penological interest in preventing this plaintiff from communicating with Inmate Johnston for the sole purpose of obtaining the legal affidavit from him in this case, and, thus they must, by law, do so.

Furthermore, the Defendants, herein, argue that their prohibiting communications between inmates in different institutions is reasonable both on its face and as applied in this case, however, it has been held by several federal courts that prison officials who argue that a prison rule or practice is reasonable must submit evidence to that effect, and not just arguement. See V. Sumner, 417 F.2d 382, 386-87 (4th Cir. 1969); Harris v. United States, 474 F.2d 464 (7th Cir. 1973); Swaffin v. Lowe, 901 F.2d 730 (9th Cir. 1990); and Reeseley v. Brown, 754 F. Supp. 113, 117 (W.D. Mich. 1990).

Thus the Defendants, herein this instant case, have clearly failed to submit evidence to that effect. Furthermore, Defendants reliance upon Turner v. Safley, 475 U.S. 1075, 1075-76 (1987), is misplaced, as the Turner case did not forbid correspondence concerning religious matters, so Turner did not directly address this issue.

Finally, on this, in Harshbarger v. Spellman, 654 F.2d 1347 (9th Cir. 1981), the court held that a complete prohibition of correspondence with a prison "penit writer" violated the First Amendment.

Given the above foregoing facts and arguments herein, Plaintiff avers & submits, that, while the DOJ regulation prohibiting communication between prisoners may well be reasonable on its face, it is not reasonable as applied herein this instant case.

II. PLAINTIFF "HAS" DEMONSTRATED THAT COMMUNICATION WITH ANOTHER INDIVIDUE IS NECESSARY TO PERMIT HIM TO OPPOSE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT.

Defendants claim & argue, that =

In seeking relief from this Court, plaintiff asserts that he requires Immate Johnston's affidavit to oppose defendants' motion for summary judgment but he does not explain with any specificity why this is so. The most he says is that Immate Johnston has information showing that defendants' submissions on summary judgment are lies. Pl. Motion and Brief, p. 2.

Plaintiff does not provide an offer of proof as to the facts he hopes to establish through Immate Johnston's affidavit. Nor does he assert the Immate Johnston is the only source from which these facts can be derived.

In short, plaintiff has not established right to the relief he seeks from the Court. Accordingly, his motion to compel defendants to permit him to correspond with Immate Johnston shall be denied. 4/

However, in reply to the above, this Plaintiff avers & that, he is proceeding pro se without the benefit or aid of a lawyer, herein this case sub judge, and he was that he had to state with any specificity why he requires Johnston's affidavit to oppose defendant's motion for summary judgment, or was this plaintiff aware that he had to offer of proof as to the facts he hopes to establish through Johnston's affidavit, or was this plaintiff aware that he assert that Immate Johnston is the only source from which facts can be derived. The U.S. Supreme Court has that lawyers are to oppose complaints & respond to motions than formal pleadings drafted by lawyers. See Holmes v. U.S., 59, 101 S.Ct. 1123 (1980), (11th Holmes v. U.S., 106, U.S. 925, Ct. 514 (1972)). See also Balfanz v. Balfanz, 901 F.2d 646 (4th Cir. 1990) (made to obligations create plaintiff benefit of any doubt in order to maintain an affirmative defense, one held to a less stringent standard).

than pleadings drafted by attorneys.
Furthermore,

those pleadings are to be construed liberally and held to less stringent standard than formal pleadings drafted by lawyers. If court can reasonably find pleadings to state valid claim on which litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, inattentive unfamiliarity with pleading requirements. See Spain

Federal Election Commissioners, 990 F.2d 643 (D.C. Cir. 1993); W. Va. v. Va., 969 F.2d 591 (7th Cir. 1992); Briggs v. Mac Donnell, 454 U.S. 102, S. Ct. 700 (1982) and Haines v. Kerner, 404 U.S. 519, 92 S. 594 (1970).

Furthermore, this Plaintiff did "not" deliberately or purpose fail to ~~do so~~ and he now does so herein below.

Defendants claim & argue that in seeking relief from the plaintiff asserts that he requires Inmate Johnston's affidavit to defeat defendant's motion for summary judgment, but he does not explain specifically why this is so, and plaintiff avers & submits he does so herein below and infra.

Plaintiff Joe avers & submits, that he needs Inmate Johnston's affidavit to oppose Defendants' motion for summary judgment because 1) Fed. R. Civ. P. 56(c) & (e), require the plaintiff to submit affidavits opposing the motion for summary judgment, 2) Inmate Johnston's affidavit will set forth facts showing that the and Ben C. Livingood "lie" in Defendants' memorandum in support of motion for summary judgment and in the unsigned Declaration of Ben C. Livingood, which Defendants offer in support of motion for summary judgment. Specifically, it is Inmate Johnston's affidavit with specific facts that, Defendant did not permit Inmate Johnston to use his own personal software and books and reports to look a Bible or Quran in their RHU cells in November and 1999, and from 1st of January, 2000, and that they had not been permitted to have their own personal

Plaintiff Jare did not have the opportunity to obtain his re-
books from his stored property in November, 1999, that In-
mate John Stan's Affidavit will show facts that Defendant
Rubendall & Rager "did" deny Plaintiff Jare's legal & relig-
materials to him in April & May, 2000, - that Inmate John
a Affidavit will show facts that, the RHU officers,
developed an ongoing practice of denying RHU inmates sta-
outside exercise, in November & December, 1999 & that
developed a practice of placing a plexiglass shield a-
RHU inmate's cell doors and that Defendants Ky-
Palakovich & Rhoades were all personally aware of suc-
failed to do anything about such, and that, inmate John's
affidavit will show facts that, it was excessively hot in
in November and December, 1999, and that there was a
problem with the heating system in the RHU in November &
thereby also supporting what this plaintiff states in
initial, amended & supplemental complaints, herein the 7th
and 8th that without inmate John Stan's affidavit, this
will be unable to adequately and effectively oppose, con-
Defendants Motion for Summary Judgment and Memo-
Support, herein this case sub judice and thus, he has
denied his rights to necessary evidence to enable
so and as a consequence, he will be denied his right of
process of the law under the 14th Amendment of the United
Constitution and will be denied his rights under Article I,
Pennsylvania State Constitution as well.

Defendants also claim & argue, that Plaintiff does not provide
proof as to the facts he hopes to establish through inmate John's
does he assert that inmate John Stan is the only source from which the
facts can be derived, and the plaintiff avers & submits that, he
provided an offer of proof as to the facts he hopes to establish through
John Stan's affidavit, as is stated above & supra pp. 6, herein, & that
that given the fact that this Court previously

illegally denied Plaintiff's Motion For An Order Requiring Prison Chaplain Rev. Vogel and Officer Craig to Sign Affidavit For The Plaintiff, herein this case sub judge, Ino. Norman Johnston is the only source from which the facts can be derived.

CONCLUSION

Based upon the above foregoing, herein, ~~sub judge~~ and upon the papers & files in this case, this Plaintiff has established a right to the relief he seeks from the court and in the interests of fundamental fairness, equal justice & due process of law, it would be a manifest miscarriage of justice if this court does not enter an order granting this Plaintiff's Motion For An Order Requiring Defendant Dragovich And SCI-Greene Superintendent Canner Blaine to Permit this Plaintiff to Communicate with And Write to Norman Johnston At SCI-Camp Hill PHU, herein, in that, if court denies this Motion this Plaintiff "will" be unable to obtain such Affidavit re Norman Johnston & thus, he will be illegally denied relevant & necessary evidence which he and must have to combat, counter & adequate & effectively disprove Defendants' Motion For Summary Judgment And Memo. In Support, herein this case sub judge.

(10) HEREOF, for all the preceding reasons, as well as all of that set forth in this Plaintiff's Motion For An Order Requiring Defendant Dragovich And SCI-Greene Superintendent Canner Blaine to Permit this Plaintiff to Communicate with And Write to Norman Johnston At SCI-Camp Hill PHU And Brief In Support, by reference hereunto the same, this court should grant Plaintiff's Motion:

RESPECTFULLY SUBMITTED

John Richard Jue

Dated: 21st JUNE 2001: (S)

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